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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,758	10/01/2002	David A. Baucom	11354-001	9373
29391 7590 09/02/2008 BEUSSE WOLTER SANKS MORA & MAIRE, P. A. 390 NORTH ORANGE AVENUE SUITE 2500 ORLANDO, FL 32801				
EXAMINER KOEHLER, CHRISTOPHER M				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/042,758

Applicant(s)

BAUCOM, DAVID A.

Examiner

Christopher M. Koehler

Art Unit

3726

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 6-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Newly submitted claims 6-14 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:
2. Claims 6-11, drawn to a method of lifting and moving a run of shelving is restricted as a combination-subcombination with the originally presented claims. Claims 6-11 require adjustable length horizontal members and extending a pair of transverse bars along the width of the shelving, which are not required by claims 1-5. Claims 1-5 require simultaneous lifting actuation of the plurality of lift elements which is not required by claims 6-11.
3. Claims 12-14, drawn to a method of lifting and moving a run of shelving is restricted as a combination-subcombination with the originally presented claims. Claims 12-14 require adjustable length horizontal members, which are not required by claims 1-5.
5. Claims 1-5 require establishing lifting engagement and moving the frame and the shelves to a desired location which is not required by claims 6-11.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 6-14 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson (US Patent No. 4,934,893).

Claim 1:

Johnson teaches a method for lifting and moving a run of shelving (abstract; figure 1) having a plurality of shelving units (in phantom, figure 1) placed in side-by-side relation, said method comprising: positioning a frame structure (10) about the run of shelving (figure 1), said frame structure having a first frame section (12a, 12b, 14, 16, 18, 24, 34) having wheels (26) for supporting and moving said first frame section on a floor surface (col. 4, line 52-col. 5, line 25), a second frame section (36, 42, 44, 46, 48, 50, 64, 84) being in substantially vertically moveable assembly with said first frame section (col. 5, lines 26-68) and a plurality of lift elements (42, 44) being supported by said first frame section and providing for support and substantially vertical lifting of said movable frame section; establishing lifting engagement (col. 6, lines 51-65) of said movable frame section with the run of shelving; simultaneously imparting lifting actuation to said plurality of lift elements for lifting of said movable frame section and the shelving engaged thereby (col. 7, lines 49-61); moving said frame structure and the run of shelving supported thereby on said wheels to a desired location (col. 7, lines 61-63); and simultaneously imparting lowering actuation to said plurality of lift elements for lowering of said second frame section and lowering of the run of shelving to the floor surface (col. 7, lines 63-66).

Claim 5:

Johnson teaches when lifting and lowering said second frame structure, causing guiding of said second frame structure relative to said first frame structure to ensure even lifting and lowering of said second frame section relative to said first frame section and for simultaneous raising and lowering all of the shelving units making up the run of shelving supported thereby (see col. 6, lines 1-18).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Sumida (US Patent No. 3,494,491).

Claim 2:

Johnson teaches the structure of claim 1 and hydraulic lifting jacks (42, 44) for simultaneously lifting the bookshelf on the frame. Johnson does not expressly teach causing lifting and lowering actuation of the controllable fluid supply for simultaneous communication of pressurized fluid from the controllable fluid supply to each of the fluid energized lift and lowering elements for simultaneous expansion/bleeding of each of the fluid energized lift and lowering elements for lifting and lowering of the second frame section and the shelving engaged thereby. Johnson does however clearly state that "while hydraulic jacks 42 and 44 are used as a lifting means in the preferred

embodiment, other suitable lifting means may equally well be utilized." (col. 5, lines 57-60).

Sumida teaches a method for lifting and lowering articles for transportation of such. Sumida discloses the use of lifting means such as hydraulic piston cylinders for the vertical movement of the lifting member in communication with control means for regulating the vertical movement of the lifting members wherein an equal flow of hydraulic fluid is provided to the various hydraulic piston cylinders for assuring simultaneous raising and lowering of the lifting member though the load may be unevenly distributed (col. 1, lines 23-39).

It would have been obvious to one of ordinary skill in the art at the time of invention to have used the control means of Sumida to simultaneously and evenly lift and lower the second frame of Johnson since the control means of Sumida will safely and evenly lift the article regardless of weight distribution therefore reducing the likelihood of the article tipping or falling causing potential injury to the operator (also see Sumida col. 7, lines 42-47).

The examiner furthermore notes that there are a great variety of systems similar to that of Sumida used in a wide range of applications for even lifting of articles large and small. (See Berends et al. WO 98/30488).

Claims 3 and 4:

Johnson and Sumida both teach the use of hydraulic lifting elements and suggest that hydraulic lifting elements are but one choice of several equivalent options (Johnson, col. 5, lines 57-60; Sumida, "lifting elements *such as* hydraulic cylinders", col.

1, lines 23-26 (emphasis added)). Neither reference explicitly mentions the use of pneumatic lifting elements. Pneumatic lifting elements such as pneumatic cylinders, and pneumatic bladders, are well known in the art of simultaneous lifting and lowering elements and operate in the same manner as hydraulic lifting elements. Thus the substitution of pneumatic lifting elements for hydraulic lifting elements is well within the ability of one of ordinary skill in the art, and it would have been obvious to one of ordinary skill in the art at the time of invention to substitute the pneumatic lifting elements in place of the hydraulic lifting elements because it is merely a substitution of one known element (hydraulic) for another (pneumatic) that would yield predictable results. See *KSR Int'l. v. Teleflex Inc.*, 127 S.Ct. 1727, 1740 (2007) ("when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result.") (citing *United States v. Adams*, 383 U.S. 39, 50-51 (1966)).

Response to Arguments

8. Applicant's arguments filed 6/23/2008 have been fully considered but they are not persuasive.
9. Applicant argues that Johnson does not teach simultaneously imparting lifting actuation to a plurality of lift elements for lifting a movable frame section and the shelving engaged thereby. Applicant does however agree that the cross bar support simultaneously lifts the bookshelf. The examiner maintains that it must be inherent that the lift elements simultaneously lift the cross bar support if the cross bar support is capable of simultaneously lifting the book shelf.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher M. Koehler whose telephone number is (571)272-3560. The examiner can normally be reached on Mon.-Fri. 7:30A-4:00P.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David P. Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. M. K./
Examiner, Art Unit 3726

/DAVID P. BRYANT/
Supervisory Patent Examiner, Art Unit 3726